

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RN WELLNESS LLC and THE PERLER
GROUP, INC.,

Plaintiffs,

Case No.: 21-cv-10704 (ALC)

v.

Judge Andrew L. Carter, Jr.

ESSENTIALS HERO LLC and
BRANDON BERNSTEIN,

Defendants.

DECLARATION OF ALEX TERRACIANO

I, Alex Terraciano, hereby declare pursuant to U.S.C. § 1746(2), under penalty of perjury, that the following is true and correct:

1. I am the sole managing member of Essentials Hero LLC (“EH”), a limited liability company registered to conduct business in the State of California. EH has been registered with the State of California since June 2020. EH is a defendant in the above-captioned matter.

2. This Declaration is submitted by EH in opposition to the motion to dismiss (Doc. Nos. 32-33) filed by Plaintiffs, RN Wellness, LLC and The Perler Group, Inc. (collectively, the “Plaintiffs”), whereby the Plaintiffs are seeking the dismissal of the breach of contract counterclaim EH filed against RN Wellness.

3. EH is a health and wellness online retailer that sells personal protective equipment (“PPE”) such as gloves, face masks, disinfectants and testing kits; such items have become necessary and vital in the campaign to address the ongoing COVID-19 pandemic. EH’s website is www.essentialshero.com. EH sells PPE nationwide.

4. As the sole managing member of EH, I oversee that daily operations of the company, manage all employees, and negotiate all contracts entered into by the company including all contracts entered into with independent sales contractors who assist with the sale of PPE products.

5. Although RN Wellness is suing EH through this action, claiming that EH used the services of Defendant, Brandon Bernstein, to steal Plaintiffs' client list and trade secrets, in the past, RN Wellness was a customer of EH.

6. EH started selling PPE to RN Wellness in 2020. Numerous transactions were conducted whereby RN Wellness purchased PPE from EH, and EH, as a supplier, blind shipped those products directly to RN Wellness' customers.¹ In order to ship the PPE to RN Wellness' customers, EH was provided with RN Wellness' customer contact information. RN Wellness provided EH with the names and addresses of approximately 35 of its customers.

7. Through these transactions, EH sold over \$160,000 in PPE to RN Wellness.

8. At one point, RN Wellness fell behind in its payments to EH. Thus, on August 31, 2021, EH and RN Wellness entered into a written letter agreement whereby RN Wellness agreed to pay EH \$38,737.62 by September 24, 2021, to bring the balance owed current. A true and correct copy of the written letter agreement is attached hereto as **Exhibit 1**.

9. According to the letter agreement, the following installment payments were to be made by RN Wellness; (a) \$9,000 by August 31, 2021; (b) \$6,000 by September 3, 2021; (c) \$15,000 by September 8, 2021; and (d) \$8,737.62 by September 24, 2021. (*See Exhibit 1.*)

¹ Blind shipment is when a shipper ships a product directly to a supplier's customer while hiding the identity of the shipper from the customer. This causes a customer to believe the product came directly from the supplier.

10. RN Wellness failed to make timely payments according to the installment schedule provided in the written agreement, and failed to pay in full the \$38,737.62 by the September 24, 2021, due date. As of today, RN Wellness still owes EH \$8,816.16.

11. Because RN Wellness failed to timely pay the \$8,816.16 remaining due, on November 26, 2021, my attorney in California, Sanjay Sabarwal, sent a letter to counsel for RN Wellness stating, among other things, that RN Wellness “still has an outstanding balance of \$8,816.16.” (See letter from Sanjay Sabarwal to Maurice D. Pessah dated November 26, 2021, a true and correct copy of which is attached hereto and made a part hereof as **Exhibit 2.**)

12. RN Wellness failed to pay the \$8,816.16 balance due in response to the letter sent by Mr. Sabarwal.

13. Because RN Wellness has not paid the \$8,816.16 that it contractually owes to EH, on January 5, 2022, EH filed a breach of contract counterclaim against RN Wellness in this action seeking damages in the amount of \$8,816.16, plus interests, costs, disbursements and attorneys’ fees. EH’s counterclaim is contained within its *Answer to Complaint With Affirmative Defenses, Crossclaim and Counterclaim* (the “Answer”) (Doc. No. 26).

14. Of note, the \$8,816.16 that remains owed is related to blind shipments of PPE that EH made to RN Wellness’ customers. The blind shipments that EH made to RN Wellness’ customers, using customer contact information provided by RN Wellness, also support EH’s Sixteenth Affirmative Defense which provides the following:

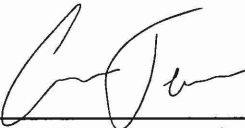
No trade secrets exists because Plaintiffs failed to take proper efforts to keep the alleged trade secret information secret. For instance, Plaintiffs provided EH with names and contact information of approximately 35 of their “secret” customers when they provided such information to EH in order to allow EH to perform blind shipments for them.

(See ¶ 100 to the Answer, Doc. No. 26.)

15. Thus, the blind shipments of PPE that EH made to RN Wellness' customers, of which \$8,816.16 remains unpaid, are relevant and material to both the claims raised by the Plaintiffs in their Complaint and the claims raised by EH in its breach of contract counterclaim against RN Wellness.

16. Accordingly, I respectfully ask that the Court deny Plaintiffs' motion to dismiss the breach of contract counterclaim that EH has filed against RN Wellness.

Executed on May 20, 2022



Alex Terraciano, Managing Member of
Essentials Hero LLC